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7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9 **AT SAN FRANCISCO**

9 AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, AFL-CIO,  
10 et al.,

11 Plaintiffs,

12 v.

13 UNITED STATES OFFICE OF  
PERSONNEL MANAGEMENT, et al.,  
14

15 Defendants.

NO. 3:25-cv-01780-WHA

DECLARATION OF KELLY  
CUNNINGHAM

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CUNNINGHAM  
NO. 3:25-cv-01780-WHA

ATTORNEY GENERAL OF WASHINGTON  
Complex Litigation Division  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
(206) 464-7744

1 I, Kelly Cunningham, declare as follows:

2 1. I am over the age of 18, competent to testify as to the matters herein, and make  
3 this declaration based on my personal knowledge.

4 2. I am the Director of the Fish Program within the Washington State Department  
5 of Fish and Wildlife (WDFW). I have been in this position for over five years. I previously  
6 served as deputy director for the Fish Program for seven years. I have Masters Degrees in  
7 Environmental Studies and in Public Administration.

8 3. WDFW is the state agency responsible for managing fish and wildlife resources  
9 throughout the State, often in consultation and co-management with local Indian Tribes which  
10 hold protected treaty rights to hunt and fish within the State.

11 4. WDFW regularly interacts extensively with employees within the National  
12 Oceanic and Atmospheric Administration (NOAA). I have seen reports that terminations of  
13 probationary employees at NOAA in recent weeks have affected as much as 10% of NOAA's  
14 workforce, and WDFW has already started experiencing the effects of those NOAA staff  
15 reductions.

16 5. Each winter, WDFW sets annual harvest regulations for all species of  
17 Pacific salmon in a complex negotiation process known as the North of Falcon process, which  
18 involves the State of Oregon, Treaty Tribes, and the Pacific Fisheries Management Council.  
19 Because these negotiated fisheries impact fish listed under the Endangered Species Act (ESA,  
20 16 U.S.C. § 1531 *et seq.*), federal review and approval of the proposed fisheries by NOAA is  
21 required to obtain legal protection against ESA violation lawsuits. This NOAA review occurs on  
22 a very short timeframe, and any delays by NOAA would prevent State fisheries from  
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1 | commencing in a timely fashion. Some reports from several years ago have suggested that the  
 2 | annual North of Falcon regulated fisheries generate nearly 100 million dollars of direct and  
 3 | indirect economic impacts. Delays to state fisheries would have very significant economic  
 4 | impacts on both state and local economies. Any reduction in NOAA staffing could jeopardize  
 5 | the critical timely review needed for NOAA consultation and approval of the annual North of  
 6 | Falcon Fisheries.

7 |         6.       WDFW operates over 80 hatchery facilities which annually release between  
 8 | 140-170 million salmon smolts to local waters. These fish are released for multiple reasons,  
 9 | including (1) mitigation to offset adverse development impacts to habitat that have occurred  
 10 | across many decades; (2) to propagate and extend genetic lines of wild fish to avoid extinction;  
 11 | (3) to expand recreational, commercial, and tribal fishing opportunities; and (4) to supplement  
 12 | the number of salmon available for endangered Southern Resident Killer Whales to eat. Because  
 13 | the operation of hatcheries can potentially have impacts on ESA-listed fish, WDFW is required  
 14 | to provide hatchery genetic management plans to NOAA for environmental review and approval  
 15 | for ESA compliance. Absent these approvals, WDFW is susceptible to citizens lawsuits under  
 16 | the ESA, which lawsuits can result in hatchery closures or reductions, and significant attorney  
 17 | fees. Such closures prevent the hatcheries from serving the multiple purposes identified above.  
 18 | WDFW has multiple hatchery genetic management plans pending review by NOAA, and NOAA  
 19 | has already been delayed in its review and approval of many such plans. I have received  
 20 | information that NOAA has terminated at least one employee assigned to reviewing these  
 21 | management plans, and that approvals are going to be delayed even further. This increases  
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1 WDFW's potential exposure and liability under the ESA and impedes the goals of the hatchery  
2 programs that serve the State and Treaty Tribes' interests.

3 7. WDFW manages the commercial Dungeness crab fishery off the Washington  
4 Coast. This fishery generates more than \$60 million in product annually. Crab pot gear can  
5 present risks to endangered whale species, so WDFW has been working closely in partnership  
6 with NOAA's Protected Resources Division to prepare for a federal Take Reduction Team  
7 process to mitigate potential Marine Mammal Protection Act (MMPA, 16 U.S.C. § 1361 *et seq.*)  
8 impacts and maintain the viability of the fishery. Any cuts in NOAA's staff related to the  
9 Take Reduction Team process threatens to undermine the timely completion of MMPA  
10 compliance efforts, and risks reducing or closing the valuable commercial crab fishery.


11 8. WDFW implements regulations for fisheries that harvest Sockeye and Pink  
12 salmon originating from the Fraser River in Canada. The regulations are developed under the  
13 provisions of the international Pacific Salmon Treaty as defined in Annex IV, Chapter 4. The  
14 Pacific Salmon Treaty identifies the Fraser Panel as the entity responsible for pre-season  
15 planning, in-season regulation, and post-season assessment of Fraser River-origin Sockeye and  
16 Pink salmon fisheries within southern British Columbia and northern Puget Sound. The  
17 Fraser Panel includes representatives from Canada and the United States. NOAA Fisheries  
18 provides one of the four panel members representing the United States. The NOAA Fisheries  
19 representative has been an integral part of the efforts to maintain commercial fishing  
20 opportunities in Washington State waters for Sockeye and Pink salmon originating from the  
21 Fraser River. For example, in 2022 and 2023 the NOAA Fisheries representative had the lead  
22 responsibility for developing an argument under Annex IV, Chapter 4, paragraph 13(d)(iii) of  
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1 the Pacific Salmon Treaty, and writing a letter to Canada, that allowed U.S. fisheries to proceed  
 2 despite opposition from Canada. Absent those letters, Washington commercial fisheries would  
 3 not have harvested over 170,000 Sockeye salmon in 2022, and over 430,000 Pink salmon in  
 4 2023. NOAA has fired its employee who served as its representative on the Fraser Panel, and  
 5 the loss of this expertise will adversely impact the State's interests in these fisheries, particularly  
 6 as the U.S. and Canada initiate negotiations that are now beginning for the 2029 update to  
 7 Chapter 4.

8 9. NOAA Fisheries adopts fisheries regulations recommended by the North Pacific  
 9 Fisheries Management Council (NPFMC) for the federal waters of the Gulf of Alaska and the  
 10 Bering Sea. WDFW has a seat on the NPFMC, along with two other council members from  
 11 Washington State. Washington State has a strong interest in sustainable fisheries management  
 12 and the \$2.1 billion in commercial fishing landings in Alaska, as a large portion of the fishing  
 13 fleet and associated industry is based out of Washington. Delays or elimination of NOAA  
 14 Fisheries ability to adopt timely regulations and manage fisheries has a significant impact on  
 15 Washington's fleet and economy. For example, a 2017 study by the Port of Seattle found that  
 16 fishing vessels moored at Port of Seattle facilities generated more than \$455 million in gross  
 17 earnings from AK fisheries, and 4900 jobs. The total statewide economic impact of commercial  
 18 fisheries operations using Port of Seattle facilities was \$1.4 billion, most of which originated  
 19 from AK fisheries. (Port of Seattle, Port of Tacoma & the NWSA. 2019. Economic Impacts).  
 20 Also, a 2013 study for the Seattle Chamber of Commerce found that the AK seafood industry  
 21 generated 23,900 jobs and \$1.3 billion in labor income for the Puget Sound region. (McDowell  
 22 Group. 2015. Ties that Bind: The Enduring Impact of Alaska on the Puget Sound region.).  
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1 I declare under penalty of perjury under the laws of the State of California and the  
2 United States of America that the foregoing is true and correct.

3 DATED and SIGNED this 6th day of March 2025 at Vancouver, Washington.

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6 KELLY CUNNINGHAM  
7 Washington State Department of Fish and  
8 Wildlife, Fish Program Director  
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